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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re J.E. et al., Minors. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES Petitioner, v. SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent, T.S., Real Party in Interest.	B238062 (Los Angeles County Super. Ct. No. CK82956)
_____ In re J.E. et al., Minors. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES Plaintiff and Respondent, v. T.S., Defendant and Appellant.	B239637

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, Stanley Genser, Juvenile Court Referee. Affirmed.

PETITION for extraordinary writ. Writ dismissed.

Office of the County Counsel, Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, David Saft, Principal Deputy County Counsel, Aileen Wong, Deputy County Counsel, for Petitioner Department of Children and Family Services, in petition B238062.

No appearance for Respondent.

Children's Law Center of Los Angeles and Craig L. Bedell for Minor J.E., in petition B238062.

Children's Law Center of Los Angeles, Charles Aghoian and Jennifer M. Lorson for Minors X.E.S and R.E.S., in petition 238062.

Barry E. Cohen for Real Party in Interest T.S., in petition B238062.

Office of the County Counsel, John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Respondent Department of Children and Family Services, in appeal B239637.

Donna B. Kaiser, under appointment by the Court of Appeal, for Appellant T.S., in appeal B239637.

Children's Law Center of Los Angeles and Craig L. Bedell for Minor J.E., in appeal B239637.

Christopher Blake, under appointment by the Court of Appeal, for Minors X.E.S. and R.E.S. in appeal B239637.

T.S. (mother) appeals from a judgment of December 23, 2011, declaring her three sons, J., X., and R. (the children), dependents of the court under Welfare and Institutions Code section 360, subdivision (d).[1] She contends: substantial evidence does not support the jurisdictional findings, pre-adjudication orders, or reasonable efforts finding; she was denied due process by the court making medical and dental neglect findings that were not alleged in the petition and the Department of Children and Family Services (Department) failing to turn over referrals and Title XX's[2]; and the Department disregarded her religious and medical rights.

The Department cross-appeals from the judgment and dispositional orders, contending substantial evidence does not support the court's dismissal of an allegation that mother's emotionally unstable and erratic behavior placed the children at risk of harm or the dispositional home-of-parent order releasing X. and R. to mother's custody. X. and R. agree with the Department's contentions.

Concerning mother's contentions, we conclude substantial evidence supports the jurisdictional and reasonable efforts findings. Mother's challenges to pre-adjudication orders, and the Department's handling of her religious and medical concerns and the referrals, are not cognizable in the appeal. She forfeited the contention the medical and dental neglect findings violated due process and separation of powers. She has not shown that any error in disclosure of the Title XX's was prejudicial.

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[1] Hereinafter, all statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

[2] Title XX's refer to "Delivered Service Log[s,]" prepared by Department staff, which set forth "all contacts, services and visits."

Concerning the Department's contentions, as the children come within the court's jurisdiction under the sustained allegations of the petition, we need not decide whether substantial evidence supports jurisdiction on another ground. The home-of-parent order was not an abuse of discretion as it is supported by substantial evidence.

Accordingly, we affirm the judgment and orders.

In a petition for extraordinary writ, which this court previously ordered to be considered concurrently with the appeal, the Department seeks to set aside the home-of-parent order for X. and R., on the ground it was an abuse of discretion, and requested an immediate stay of the order. X. and R. joined in the petition. We granted the stay request on December 23, 2011. (Order, B238062.) As we conclude in the appeal that the home-of-parent order was not an abuse of discretion, the Department's contention in the petition for extraordinary writ is moot.

However, as nearly two years have passed since we stayed the home-of-parent order, an order vacating the stay order will not return the matter to the circumstances that existed before the stay was issued. We remand the matter for a new disposition hearing for X. and R., to be conducted as expeditiously as possible. Our order of December 23, 2011, staying the dependency court's December 23, 2011 home-of-parent order will remain in effect until the dependency court has made a custody order at the conclusion of the disposition hearing and a file-stamped copy of the custody order is filed in this court.

STATEMENT OF FACTS AND PROCEDURE[3]

J. was born in 1998 to mother and Jan E., J.'s presumed father.[4] X. was born in 2004 to mother and an alleged father. R. was born in 2009 to mother and an unknown father. The children lived with mother. In 2010, J. attended middle school. When

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[3] In accordance with the normal rule, we state the facts in the light most favorable to the judgment. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

[4] Mother and Jan were married in 1997, separated in 2000, and divorced in 2007.

mother, a massage therapist, went out to work or for other reasons, she frequently left X. and R. home alone, unsupervised, or in J.'s care. Mother did not believe in using baby sitters or putting the children in day care because she believed it would damage their " 'spirit' " and they would catch bird flu and swine flu. Mother believed that leaving R. in five-year old X.'s care was appropriate, because X. knew not to answer the door and how to get help if necessary. X. did not understand how to get help or that he should not open the door.

Mother was hostile to medical and dental treatment and immunizations for the children. She did not take J. or X. to the dentist for preventive dental care. She avoided taking the children to the doctor because there were sick people there. She did not get prenatal care when pregnant with X. and R., provide immunizations for X. and R., or take the children to the pediatrician for regular, well-baby checkups. Well-baby visits should occur at close intervals during the first year, twice the second year, and yearly thereafter. Well-baby visits are important. That is when the doctor discusses and evaluates growth, development, nutrition, safety, and milestones the parent should watch for and gets a feel for whether the child is meeting developmental milestones so that any necessary intervention can be timely made. Mother never took R. to the doctor. She left the hospital within two hours after R.'s birth against medical advice and after refusing to allow tests and observation to assess the baby's health. She was advised by the doctor at the hospital to have R. seen by a pediatrician within one to two days, but she did not do so. She gave false personal information so that the hospital could not follow up. In early June 2010, mother did not seek medical attention for R. when he hit his head " 'really hard' " on a bench.

On June 17, 2010, mother left X. and R. at home unattended at night for one and a half hours and, during her absence, R. fell from the couch and fractured his skull. There was a three inch, bright red, swollen contusion on his forehead, his eyes were glassy, and he was whimpering and lethargic, when neighbors, who heard R. crying loudly, called the

paramedics. Mother did not return until after the police had arrived. Mother believed that leaving R. alone with X. that night was appropriate.

R. was taken to the hospital for an evaluation of his head injury. Although he had weighed 7.4 pounds at birth, his current weight was well below the 5th percentile. He was diagnosed as failure to thrive. He was released from the hospital before it was discovered his skull was fractured. The next morning, when mother reluctantly brought R. back for a follow up CT scan of his skull, Dr. Claudia Wang was very concerned about R.'s low weight and urged mother to admit R. for an evaluation and work up of the reason for the low weight. Mother refused to admit R. for this purpose or have his blood tested. Mother also refused to agree to take R. to the doctor as soon as possible to see if he was growing and gaining weight. When Dr. Wang needed to know if all three children had the same father so that their growth patterns could be compared, mother falsely stated they had the same father. Moreover, although she stated R. was receiving 70 percent of his nutrition from nursing, mother refused Dr. Wang's request to have her breast milk-production evaluated. The diet mother was feeding R. was inappropriate for a 14-month old. A child suffering from failure to thrive is at risk for stunted growth for life, and the underlying reasons for the diagnosis could have other growth involvement implications. A stunted head will impair intellectual development.

The children were detained by the Department on June 30, 2010, and a section 300 petition was filed. Thereafter, R. received regular medical care. His pediatrician diagnosed him with failure to thrive and believed there was a nutritional component. Over time, R. demonstrated weight gain. J. was found to need 13 fillings, two root canals, and one possible extraction, and X. needed pulpotomy, restorations, and sealants with anesthesia. X.'s attorney stated X. was scheduled for two days of oral surgery for "baby root canals." In early October 2010, X. contracted whooping cough, one of the diseases mother did not immunize him against.

The contested jurisdictional hearing began on October 4, 2010. On October 15, 2010, after all parties except mother rested, the court struck the allegation that mother

demonstrated emotionally unstable and erratic behavior which placed the children at risk of harm.

On April 18, 2011, at the conclusion of the jurisdictional hearing, the court amended the petition to conform to proof and sustained allegations under section 300, subdivision (b) that the children suffered, or were at substantial risk of suffering, serious harm or illness as a result of mother's failure to adequately supervise or protect them and her willful or negligent failure to provide them with adequate medical and/or dental care, in that: (1) in count b-2, on June 17, 2010, mother left X. and R. "home alone without appropriate supervision which resulted in [R.] falling off a couch and sustaining a Right Parietal Skull fracture[, and,] on numerous occasions prior thereto, . . . mother left [X.] and [R.] home alone without appropriate supervision;" and (2) in count b-3, on and before June 17, 2010, mother "neglected the medical and/or dental needs of [J., X.], and [R.], in that, among other things, she failed to get pre-natal care for [X.] and [R.], removed the child [R.] from the hospital within hours of the child's birth against medical advice and failed to take [R.] for any follow-up care as recommended by the hospital staff prior to mother leaving the hospital with the child, failed to ever take any of the children for well-baby visits so that physicians could monitor the growth, health, and well-being of each child, and further assess the need for a treatment regiment for [R.]'s diagnosed medical condition of Failure to Thrive. In addition, mother has failed to take any of the children for preventive dental visits and, as a result, [J.] sustained 13 untreated cavities and the need for two root canals, and the possible need for a tooth extraction."

The court stated: "I have sustained basically two different (b) allegations. One is the mother leaving the two youngest children alone without appropriate supervision, and the other is the mother's failure to provide appropriate prevent[ive] as well as dental care and medical care. [¶] With regard to the first issue first, that is, leaving the children home alone, there were two neighbors that testified. . . . [¶] . . . Clearly, they didn't like mother. Clearly, they were biased against her. . . . But I don't think they lied about the fact that the kids were left alone on prior occasions without appropriate supervision. [¶]

Clearly, . . . on the evening of June 17 it is undisputed they were left alone . . . for significantly more than one hour, resulting in the child [R.] falling and sustaining a skull fracture. I don't think there are any disputes that the skull fracture was as a result of the fall in that particular evening and not from some event in the past, . . . corroborating the fact that the children were left home alone on numerous prior occasions. [¶] . . . [J.] admitted that the children were, in fact, left alone on prior occasions . . . ." The testimony that X. knew he could get help from a neighbor if necessary when X. was alone with R. and the children were instructed not to open the door when home alone clearly implied that "mother had left these children alone on prior occasions without appropriate supervision. [¶] So based upon the totality of the evidence, I find that (b)(2), as amended, is true by a preponderance of the evidence. [¶] With regard to (b)(3), as amended, the evidence is overwhelming that every factor that is articulated in (b)(3), as amended, is, in fact, true." Mother's plan for dental care was for the children to get dental care from the family members who were dentists living in Switzerland or mother pled she was too poor to afford dental or medical care. "I don't believe that's supported by the evidence. [¶] Clearly, mother is a very resourceful woman, owns several condominiums, had $3,000 in cash . . . ." Mother failed to give priority to meeting the children's physical and emotional needs. Mother's plan "was merely a concoction of the defense to explain away the fact that these children never received any dental care whatsoever or any medical care whatsoever except for perhaps two occasions [when J. may have gone to the doctor]. [¶] But, clearly, mother's failure to take the children to the doctor at any time or to a dentist at any time created a risk of harm to them which resulted in serious dental problems for J., the difficulty in assessing a treatment protocol for diagnosed failure to thrive condition, the fact that she ran out of the hospital after giving birth to R. when she was told that within 24 hours she should take the child to a doctor for follow up to make sure he is okay. Just a whole pattern of her failure to provide any medical or dental care to the children presented and placed them in a substantial risk of harm. [¶] So for all those reasons I think that . . . both amended

counts are supported by a preponderance of the evidence, and those are my findings."

A contested disposition hearing commenced on July 25, 2011, and concluded on December 23, 2011. The court ordered the children placed with mother under a home-of parent order, under specific conditions,[5] and directed the Department to provide family preservation and family maintenance services.

DISCUSSION

1. *Substantial evidence.*

a. *Substantial evidence supports the sustained allegations of the petition.*

Mother contends substantial evidence does not support the sustained allegations. The allegations were sustained under section 300, subdivision (b). The contention is readily rejected.

(1) *Standard of review.*

In determining whether an order is supported by substantial evidence, "we look to see if substantial evidence, contradicted or uncontradicted, supports [it]. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Issues of fact and the credibility of witnesses are questions for the trial court. (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 495.) "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court." (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) Thus, the pertinent inquiry is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

(2) *Section 300, subdivision (b).*

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[5] J. was already living in mother's home on an extended visit ordered on March 18, 2011.

Section 300, subdivision (b), in pertinent part, describes a child who "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or . . . by the willful or negligent failure of the parent or guardian to provide the child with adequate . . . medical treatment . . . ." "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) The purpose of the juvenile court law is to provide "maximum safety and protection for children" being harmed or who are at risk of harm. (§ 300.2.)

(3) *Count b-2 is supported by substantial evidence.*

Concerning the sustained allegation in count b-2, mother does not dispute she left X. and R. alone on June 17, 2010. There was evidence from two neighbors that mother routinely left the two children home alone unsupervised. Moreover, there was evidence mother went out for work and other appointments and did errands outside the home. She did not believe in using babysitters or putting the children in day care. It may reasonably be inferred that, as J. was enrolled in school, he was often not available to stay home with X. and R. when mother went out. It may reasonably be inferred from the fact mother believed X. knew what to do if he needed help when looking after R. that mother left X. and R. home alone. It is reasonable to conclude from the foregoing evidence and reasonable inferences from the evidence that, on numerous occasions, mother left X. and R. home alone without appropriate supervision, as alleged in the sustained petition.

Mother does not dispute X. suffered a skull fracture. Dr. Wang, the head of the suspected child abuse and neglect team that evaluated R. at the hospital, believed the skull fracture was the result of the fall on June 17, even though skull fractures cannot be dated from the fracture itself. Dr. Wang did not believe mother's explanation about R. hitting his head two weeks earlier on the underside of a bench. Dr. Wang believed the fracture was probably the result of a fall. "It most likely occurred from neglect since

[mother] was not there to see if [R.] fell that night." Moreover, there was evidence R. suffered a large contusion on his forehead from the fall, his eyes were glassy, and he was whimpering and in a lethargic condition. This is substantial evidence supporting the sustained allegation the fracture was sustained when R. fell from the couch on June 17.

Leaving children age five years old and younger alone, unsupervised, creates a substantial risk the children will suffer serious harm. Mother's neglect on June 17 resulted in serious physical harm to R.

Accordingly, substantial evidence supports the sustained allegation in count b-2 that the children suffered or were at substantial risk of suffering serious harm or illness as a result of mother's failure to adequately supervise or protect them, in that, on June 17, 2010, mother left X. and R. alone without adequate supervision, resulting in R. falling off a couch and fracturing his skull and, on prior numerous occasions, mother left X. and R. home alone without appropriate supervision.

(4) *Count b-3 is supported by substantial evidence.*

Concerning the sustained allegation in count b-3, mother does not dispute she removed R. from the hospital shortly after his birth against medical advice, did not take him to see the pediatrician within one to two days as recommended at the hospital, and did not take him for regular well-baby visits. Moreover, substantial evidence supports the other factual allegations in count b-3. Mother failed to get prenatal care for X. and R. or take the children for well-baby visits. The growth, health, and well-being of the child are monitored during well-baby visits. The statement on R.'s inpatient discharge summary of June 20, 2010, that he was "[f]ound to have failure to thrive" is evidence he received a diagnosis of failure to thrive "on and about June 17, 2010," as alleged in count b-3. Mother's refusal on June 18, 2010, to admit R. to the hospital to undergo a work up of his low-weight condition, agree to take R. to the doctor promptly to monitor his growth, provide accurate information concerning R.'s parentage, or undergo an evaluation of her breast feeding is evidence mother refused to permit the doctors to medically assess the treatment R. needed for his condition, as alleged in count b-3.

There is evidence mother failed to take the children for preventive dental visits and evidence J. needed 13 fillings, two root canals, and one possible extraction and X. needed pulpotomy, restorations, and sealants with anesthesia. Thus, substantial evidence supports the sustained allegations of mother's willful or negligent failure to provide the children adequate medical and/or dental care.

Mother contends the sustained allegations in count b-3 do not support jurisdiction under section 300, subdivision (b) because they did not show the children were at risk of harm. We disagree. As a result of the lack of preventive dental care, J. and X. suffered serious physical harm. Moreover, there was evidence children suffering from failure to thrive risk a lifetime of serious physical harm and impaired intellectual development. Mother's refusal to allow the doctors to address R.'s low weight on and about June 17, and her failure to take R. for well-baby visits prior thereto where his condition would have been monitored, placed R. at risk.[6] It is reasonable to infer, moreover, that omitting to take X. and J. for well-baby visits, and refusing to allow a medical assessment of newborn R., created a risk of harm from the absence of medical assessment, monitoring, and supervision.

We conclude substantial evidence supports the finding the children suffered, or there was a substantial risk they would suffer, serious harm by mother's failure to provide adequate medical and/or dental care based on the facts alleged in count b-3.

Mother reargues the evidence and asks us to reweigh it. This we will not do. Our role is to determine whether substantial evidence supports the findings. In this case,

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[6] The court explained the risk of harm mother created by her conduct: "Let's assume I have a child. I take him to the doctor and the doctor says, he's got a growth. Doctor said, that's cancerous. He needs to do x, y, and z and I say, not a chance, you know, my family has it and I'm not going to. You know, I'm not going. You know what, forget it. And it turns out it's not cancerous but I don't do anything and by chance it's not cancerous. Are you telling me that it's appropriate to just ignore it, because that's what the evidence suggests mother did. [¶] . . . [¶] Whether he's failure to thrive or not."

ample substantial evidence supports the findings the children suffered or were at substantial risk of suffering serious physical harm or illness as a result of mother's failure to adequate supervise and protect and mother's willful or negligent failure to provide adequate medical and dental care.

b. *We need not decide whether substantial evidence supports the finding that the allegation concerning mother's unstable and erratic behavior was not proved.*

On October 15, 2010, after the Department and the children rested, the court granted mother's motion under section 350, subdivision (c)[7] to dismiss an allegation under section 300, subdivision (b) that mother "has repeatedly demonstrated emotionally unstable and erratic behavior and has created a detrimental home environment placing the children at risk of harm." The court stated, "that language is too vague to be jurisdictional and support a finding without expert opinion or testimony." The Department contends the dismissal of the allegation should be reversed as not based on substantial evidence. We need not decide the contention.

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451[where substantial evidence supported jurisdiction

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[7] Section 350, subdivision (c) provides: "At any hearing in which the . . . [D]epartment bears the burden of proof, after the presentation of evidence on behalf of the . . . [D]epartment and the minor has been closed, the court, on motion of the minor, parent, or guardian, or on its own motion, shall order whatever action the law requires of it if the court, upon weighing all of the evidence then before it, finds that the burden of proof has not been met. That action includes, but is not limited to, the dismissal of the petition . . . ."

under section 300, subdivision (b) based on the parent's history of domestic violence, the court did not need to decide whether jurisdiction was also supported by parent's drug use]; accord, *In re I.J.* (2013) 56 Cal.4th 766, 773-774.)

Here, dependency jurisdiction over the children under section 300, subdivision (b) is supported by the sustained allegations in counts b-2 and b-3. The court took jurisdiction based on those counts and ordered mother to undergo counseling, including mental health counseling[8] and conform to specific behaviors to safeguard the children's welfare. (See pp. 22-23, *infra*.) The Department and X. and R. do not identify any consequence from dismissal of the allegation that would necessitate review of the contention.[9] Therefore, we decline to review whether the dismissed allegation constitutes an additional ground for jurisdiction.

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[8] The disposition order required mother to "attend [Department] approved weekly individual counseling with a licensed therapist, or registered intern supervised by a licensed therapist, if mother intends to participate in therapy other than with Ms. Laidley or through Family Preservation. Said therapist shall not be approved by [the Department] unless the therapist agrees to provide [the Department] with periodic reports of mother's participation and progress in treatment. Said therapy shall address case related issues including, but not limited to, issues of child neglect, appropriate supervision, appropriate boundaries, conflict resolution, and anger management. Mother shall sign all necessary release forms to allow [the Department] to contact her therapists and obtain the progress reports regarding the goals of therapy as well as mother's participation, attendance, and progress." The Department was ordered to provide mother's therapists with a copy of the sustained petition, the case plan, and all relevant reports, so that mother's therapy would focus on case-related issues required by the case plan.

[9] The Department contends dismissal of the allegation resulted in the court failing to order services for mother to address her unstable and erratic behavior, and X. and R. contend dismissal resulted in the order placing them in mother's custody. We reject the contentions. As the facts which the Department alleges demonstrate mother's unstable and erratic behavior are contained in the reports provided to mother's therapists, and mother was ordered to participate in therapy, we conclude services were ordered for mother which address the behavior. As those reports were in evidence, the court considered the evidence about the behavior in exercising discretion to return X. and R. to mother's custody.

2. *Due process.*

a. *Medical and dental neglect allegations.*

Mother contends it was a violation of due process and separation of powers for the court to sustain allegations concerning medical and dental neglect that were not factually pled in the petition. As no timely objection was made on these grounds, the contention was forfeited.

Mother did not object at the hearing on November 22, 2010, when the court indicated the section 300 petition issues were being narrowed to conform to what the evidence had established to date: "[T]he issues are . . . getting reduced. . . . [¶] [One] issue is whether or not she failed to follow up and does not meet their medical or dental needs." Counsel expressed satisfaction the issues were being narrowed to conform to proof. Nor did mother object on any subsequent occasion during the trial on the section 300 petition when the court reiterated that the jurisdictional allegations would be focused on what the evidence was showing, including "mother failed to provide medical and dental care for the children, including wellness visits resulting in extraordinary dental decay for the children and inability to assess whether the child was . . . suspected failure to thrive."

When the court amended the second amended petition on April 18, 2011, to conform to proof and issued the order sustaining the petition as amended, mother did not object that the sustained allegations concerning medical and dental neglect had not been pleaded and violated due process and separation of powers.[10] The disposition hearing began on April 20, 2011. Counsel was present and did not object to the sustained allegations. Mother did not make an objection until November 17, 2011, seven months

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[10] Although aware the court would issue its ruling on April 18, 2011, mother's attorney did not appear in court on that date. The court ordered a transcript of the hearing prepared for counsel's benefit and continued the matter to April 20, 2011, for a disposition hearing.

later, after the lengthy, contested dispositional trial had concluded, by stating in closing argument, "in terms of making a record, there were findings [the court] sustained such as dental care, such as no prenatal care, that were never in the petition. And, to us, that goes to the issue of due process. You sustained findings that weren't even alleged initially. It's a procedural issue." She did not object on the ground of separation of powers.

As mother did not object on the ground of due process until seven months after the ruling was rendered and the court had concluded a lengthy, contested hearing on the proper disposition of the children based on those sustained allegations, the objection was untimely. Mother never objected on the ground of separation of powers. We conclude the appellate contention was forfeited for failure to make a timely objection on the grounds asserted in the appeal, and we decline to review it. (*People v. Fuiava* (2012) 53 Cal.4th 622, 670 [failure to make " 'a timely and specific objection on the ground sought to be urged on appeal' " forfeits review of any appellate contention based on that ground]; see also *In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 836 ["where the parent chooses not to contest the amendments, the parent waives the right to complain of the issue on appeal"]; *In re Riva M.* (1991) 235 Cal.App.3d 403, 411-412 ["As a general rule, a party is precluded from urging on appeal any point not raised in the trial court. . . . Any other rule would ' " 'permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not.' " [Citations.]' [Citation.]"].)

Mother asks this court to exercise discretion and decide the forfeited issue, because the issue of whether it is per se neglectful to fail to provide regular dental care and well baby checkups is an important legal issue. We decline the request. The court did not sustain an allegation that failure to provide regular dental care and well baby checkups is neglectful per se. Mother forfeited her contention and we see no reason to review it.

b. *Referral reports.*

Mother contends the Department's failure to turn over prior child abuse and neglect referral investigation reports violated due process. We reject the factual premise of the contention.

On October 12, 2010, the court ordered the Department to produce its investigative narratives of the 11 previous child abuse and neglect referrals concerning this family by October 15, 2010. County Counsel stated he would comply. Mother does not cite any basis in the record for her contention that County Counsel failed to comply, except to say that the record does not indicate the records were turned over. At the hearing on October 15, 2010, mother made no objection that the reports had not been produced by the court ordered deadline. Moreover, mother did not seek relief from the court for any failure of production. On this record, we do not conclude the reports were not produced. It is the appellant's burden to show error. (See e.g., *People v. Famalaro* (2011) 52 Cal.4th 1, 21.) We conclude mother had not shown the reports were not produced.

c. *Title XX's*

Mother contends the Department's failure to turn over the Title XX's during the jurisdictional phase of the proceedings deprived her of due process. The Department contends any error was harmless. We conclude mother has not shown prejudicial error. (Cal. Const., art. VI, § 13 ["No judgment shall be set aside . . . for any error as to any matter of procedure . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."]; *In re Celine R.* (2003) 31 Cal.4th 45, 59-60.)

Mother contends the Title XX's should have been turned over to her during the jurisdictional phase, without the need for a request,[11] because they contained exculpatory

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[11] Mother requested the Title XX's from the Department during the dispositional trial on July 18, 2011, and she received them four days later. She did not move to vacate the jurisdictional findings or reopen her case on jurisdiction, but contends the issue is preserved on the ground a request to reopen would have been futile.

information relevant to the jurisdictional issue of whether R. in fact suffered from failure to thrive. This information is not relevant to any sustained allegation. The sustained allegation concerning failure to thrive is that R. was diagnosed with failure to thrive, not that the diagnosis was correct.

Mother also contends the Title XX's contained information about mother's cooperation on and after June 17, 2010, with the medical evaluation of R.'s skull fracture. However, as mother acknowledges, this information was not relevant to any sustained allegation.

As the information mother contends she was deprived of was not relevant, any error in failing to produce did not affect the outcome under any standard of prejudice. Accordingly, apart from whether the issue is preserved and whether an error occurred, mother has failed to show prejudice.

3. *Abuse of discretion.*

The Department contends the dispositional order returning X. and R. to mother's custody in a home-of-parent order is not supported by substantial evidence. We disagree with the contention.

a. *Standard of review.*

We review custody determinations for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Custody rulings are not disturbed in a dependency proceeding unless they are arbitrary, capricious, or patently absurd. (*Ibid.*) " 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citations.]" (*Ibid*.) There is no abuse of discretion where substantial evidence supports the order. (*In re Daniel C. H., supra,* 220 Cal.App.3d at p. 839.)

"[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. . . . Specifically, the question becomes whether the

appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.] [¶] . . . It is not our function to retry the case." (*In re I.W., supra*, 180 Cal.App.4th at pp. 1528-1529 ["This is simply not a case where undisputed facts lead to only one conclusion."].)

b. *Section 361, subdivision (c).*

Section 361, subdivision (c) provides: "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence [that]: [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody."

c. *Relevant facts.*

R. gained weight and developed appropriately in foster care. The dental work that J. and X. needed was completed. J. lived safely and without incident in mother's home since March 2011, and social worker Sherri Pierce testified there was nothing to indicate he was at risk or would be at risk in the future in her home.

On July 30, 2010, the court ordered that no person was to discuss the case with the children, attempt to influence the children as to what they might say about the case, or make any derogatory remark concerning any other party or person to any child or within the hearing of any child. On November 22, 2010, mother was ordered to speak English only and not discuss the case with the children, not give them candy, not let the visits interfere with X.'s or R.'s school or medical appointments, and not breastfeed. On June 24, 2011, the court ordered mother not to contact any of the K. children, who were dependents of the court in an unrelated dependency case. On August 17, 2011, the court

ordered that no party involved in the dependency system and no member of the K. family was allowed to be present during visits.

Pierce testified mother complied with all court orders, including the specific orders of November 22, 2010, with the exception of an order to keep the social worker apprised of her current address, and, as to that, mother complied through her lawyer or after getting legal advice.[12] Social worker Jamie Hein testified nothing in the case activity logs or court reports indicated mother spoke German during the visits. Mother was cooperative with the monitor and visitation rules during a visit in September 2011. Mother mentioned the name of one of the social workers, as if she were going to make a comment, but she immediately allowed the monitor to redirect her. That was the only occasion when that monitor had to correct mother about what mother was saying. At the end of the visit, X. had difficulty separating from mother, and mother cooperated with the monitor to accomplish the separation. Mother testified she complied when the court directed her to follow the social worker's instructions about topics she should not talk about, even when she disagreed, and she would follow up later with her attorney if she disagreed with an instruction. A September 2011 Department report contained reports of comments by mother denigrating social workers and inappropriately discussing how X. and R. were treated in their foster home.

Numerous witnesses, including Department social workers, reported mother and the children experienced positive interaction during visits. It was observed that the children "are very happy kids. They have a lot of fun with their mother. They interact well with each other and in particular their older brother. When they're with them, they're very happy kids. And when they're with their mother, they have a lot of hugging and they like . . . to be near their mother. . . . [T]hey feel very comfortable, bonded, and appreciated around the mother. [¶] Also, they are very well disciplined. . . . When

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[12] Pierce testified mother spoke about cat allergies, meat, and Saturday school during visits, but those subjects were not ordered off-limits in the November 22, 2010 order.

[mother] tells them to do something, they do it well. But they also are happy playing together. . . . [The children] have a beautiful relationship." X. and R. were appropriately attached to mother, they were not fearful, and they were bonded with her.

Mother testified that, if X. and R. were returned to her, she would allow unannounced home calls. She would give the Department free rein in her home if that is what the court ordered, even if she did not agree with the order. As soon as she learned the court wanted her to participate in a parenting program, she found a program from the Department's referral list and began attending. She completed it in August 2011. She testified she would comply with a condition that R. continue to see his failure to thrive doctor. She was willing to go to a court-approved dietician if the court ordered it. She would do everything the court ordered as a condition of having X. and R. returned to her, including, for example, taking them to the dentist and pediatrician, not leaving them unsupervised, leaving them only with Department-approved child care providers, and letting the case workers and children's attorney speak privately with the children.

As of November 15, 2011, after seven sessions, mother was making progress in individual therapy. She had completed a parenting course. She understood she must change her approach and be compliant and she needed to provide the children with medical and dental care. Mother made a dental appointment for J. for December 2011. She complied with the court's order to not let a specific parent in another dependency case have access to J.

d. *Dependency court's ruling and order.*

In rejecting the Department's and children's position that X. and R. should be removed from mother's custody and suitably placed, the court stated: "[The Department] buttresses its [suitable placement recommendation] by anecdotal evidence . . . of mother's shortcomings included, but not limited to, antagonism by mother toward [the Department], disparaging remarks made by mother about the social workers in the presence of the children, unnecessary discussions by the mother with the children during visits on how they are being treated in foster care, even after

[the Department] and even this court has admonished mother not to do so. [¶] . . . [The Department] has also made allegations of mother's disobedience to court orders regarding her conduct during the visits with the children forming alliances with parents who have open cases in department 412 where those [parents] have also had children removed from their custody, sending emails and blogging about how [the Department] has stolen her children, and how she has been mistreated by this court, et cetera.[13] [¶] To determine whether the above concerns and beliefs of [the Department] warrant suitable placement, this court must look at . . . [section 361, subdivision (c)], which requires this court to find by clear and convincing evidence that there would be a substantial danger to the physical or emotional well-being of the children if returned home. And there are no reasonable means by which the children's physical health can be protected without removal [from] custody. [¶] . . . Focus[ing] on the risks of harm to the children if returned[ed] to mother in the context of the sustained allegations of medical and dental negligence, and lack of appropriate supervision which resulted on one occasion in R. sustaining a skull fracture, I am going to take each count one by one. [¶] With regard to b-3, regarding the medical and dental negligence, it appears that all of the children's dental issues have been resolved while the children have been in foster care. There has been no evidence presented in the last six months that R. is still a failure to [thrive]. . . . [¶] There is no evidence that R.'s skull fracture did not resolve itself without complications or that he is still in need of further medical treatment for this condition. [¶] If X. and R. were returned to mother at this time, there would be no ongoing or medical issues that mother would have to deal with immediately. [¶]

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13 The court stated, "[The Department] has inappropriately responded to mother's anger and hostility toward [the Department] . . . by focusing almost exclusively to portray mother in the wors[t] possible light. Of course, mother has made it easy for them to do so by her angry behavior toward them and name calling. Unfortunately, this has led to [the Department] filing superficial and/or one-sided reports focusing exclusively on the negative behavior of mother."

With regard to [count] b-2, regarding the lack of appropriate supervision, the important concern to be resolved by the hearing is whether the mother would comply with court orders to not leave X. and R. unattended for any reasonable length of time, or have approved child care for them if she became unavailable. [¶] [The Department] argues that mother can't be trusted to comply with court orders regarding the protection of the children based on her prior conduct and her conduct post-detention . . . . [¶] Throughout this case, this court has observed that when mother is ordered . . . by this court to do X, she will only do X. To use the mathematical terms, she will not do X plus one. She will not do X minus one. She will just do X, and no more. In other words, if mother is ordered to do something concrete, she will do it. Nothing more, nothing less. [¶] This court believes that mother has demonstrated the ability to comply with concrete orders; and therefore, this court believes that the evidence supports a finding that there are reasonable means to protect the children's physical health without the removal of custody from mother under certain terms and conditions. [¶] This will require the court to fashion a detailed and concrete safety plan for the children based on the risks presented by the sustained petition."

The court distributed a tentative order and case plan, which "would allow the children to be safely returned to the custody of mother provided that she strictly complies with the specific case plan contained therein. This proposed plan is specific and concrete. Mother is able to comply with it, if she wants to do so. [¶] [The Department] should be able to monitor compliance by mother and the safety of the children in her home. If mother fails to comply with the proposed case plan, [the Department] can easily and quickly bring the matter back before this court for remediation including re-detention of the children, if appropriate." The parties were directed to review the proposed case plan to insure it clearly set forth what mother was required to do and would be enforceable. Following input from all parties, the court finalized it.

Four, single-spaced pages in length, the plan consisted primarily of specific requirements[14] for mother to follow in, for example, the areas of cooperation with services, individual counseling, parenting counseling, medical and dental care for the children, follow up with R.'s specialist in failure to thrive, mental health services for the children, child care, school attendance, mother's residence and contact information, cooperating with home visits, and allowing access to the children by their attorneys.

On December 23, 2011, after mother acknowledged she understood the orders and was willing to comply with them, the court issued the home-of-parent order with specific conditions.

e. *Return of the children to mother was not an abuse of discretion.*

It was not an abuse of discretion to order X. and R. returned to mother's custody in a home-of-parent order with a detailed safety plan and under Department supervision, based on a finding that the evidence was not clear and convincing evidence of a substantial danger to return X. and R. home and no reasonable means to protect them without removal.

X. and R. were not at immediate risk of harm from neglect of their medical and dental needs, because they had no ongoing medical and dental issues: X.'s dental work had been completed; and there was no evidence R. was now failure to thrive or that his skull fracture was not resolved. Concerning a risk mother will negligently supervise them or neglect their medical and dental needs in the future, substantial evidence supports the court's conclusion that there were reasonable means to protect the children from these

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[14] As an example, the order stated: "Mother shall take each child to an appropriate California licensed dentist with an office in Southern California every six months for an exam and cleaning, and required follow-up treatment as requested and recommended by each child's dentist. Mother shall at all times keep [the Department] apprised of the name, address, and telephone number of each child's current dentist. Mother shall notify [the Department] each time a child is taken to see a dentist and provide the name and telephone number of the dentist and the reason for the visit. Mother shall sign any form necessary for [the Department] to verify dental care and treatment as provided herein."

risks without removing them from mother's custody. It is reasonable to infer from the evidence mother complied with specific, concrete court orders, such as the orders concerning speaking German, bringing candy, breastfeeding, and bringing visitors, that mother would comply with the specific, concrete orders of the safety plan. Mother made a dental appointment for J. There was evidence J. had been in mother's custody for nine months without incident or harm. Specific, detailed, and concrete, and drafted with input from the parties, the safety plan addressed all safety-related issues necessary for "the children to be safely returned to the custody of mother provided that she strictly complies with the specific case plan contained therein. . . . [¶] [The Department] should be able to monitor compliance by mother and the safety of the children in her home. If mother fails to comply with the proposed case plan, [the Department] can easily and quickly bring the matter back before this court for remediation including re-detention of the children, if appropriate." There was evidence mother understood, agreed to comply, and was motivated to comply with each requirement of the plan. The foregoing is substantial evidence supporting the finding the evidence was not clear and convincing that there was a substantial danger to return X. and R. home and no reasonable means to protect them without removal.

The Department asks us to reweigh the evidence and conclude X. and R. could not safely be returned. That is not our role. The court was aware of all of the issues raised by the Department, such as any failure by mother to take responsibility, factored the Department's concerns into its exercise of discretion, and concluded X. and R. could be returned safely to mother's custody under the conditions of the safety plan and supervision by the Department. The court did not abuse its discretion.

4. *Preadjudication orders.*

Mother contends the detention and visitation orders made prior to adjudication of the petition, and the continued detention of X. and R., were not supported by substantial evidence. X. and R. contend the claimed errors are not cognizable in the appeal but should have been challenged by filing a writ petition following the making of the orders.

We decline to review the contention, as we conclude it should have been raised in a writ petition at the time the orders were made. (See *In re Castro* (1966) 243 Cal.App.2d 402, 412 [pre-judgment orders that "would not properly be a ground for reversing the judgment . . . should be raised, if at all, by . . . [an] appropriate writ before judgment at the time of the court's [making of the order]"].) X. and R. also contend, and we agree with their contention, that any error suspending visits in the fall of 2010 was rendered moot by the subsequent restoration of visitation. Accordingly, we will not review the contention.

5. *Substantial evidence supports the reasonable efforts finding made at the detention hearing.*

Mother contends substantial evidence does not support the court's finding of July 7, 2010, when the children were ordered detained, that reasonable efforts were made to prevent or eliminate the need to remove the children from the home.[15] We disagree with the contention.

A reasonable efforts finding is reviewed for substantial evidence. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.)

The Adoption Assistance and Child Welfare Act of 1980 (42 U.S.C. § 602 et seq.) requires that "reasonable efforts shall be made to preserve . . . families . . . [¶] . . . prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home." (42 U.S.C. § 671(a)(15)(B)(i).) "[I]n determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern." (42 U.S.C., § 671(a)(15)(A).)

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[15] To the extent mother contends the reasonable efforts finding made at the detention hearing must be stricken because the dependency court found on November 22, 2010, that Department reports were biased, the contention has no merit. The reasonable efforts finding was made two and a half months earlier and referred to a period prior to July 7, 2010.

Section 361, subdivision (c) provides: " The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . ." "The . . . reasonableness of the [Department's] efforts are judged according to the circumstances of each case." *(Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) The Department is not required to "take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) " '[S]ervices are voluntary . . . and an unwilling or indifferent parent cannot be forced to comply with them. [Citations.]' [Citations.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365.) "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Mother did not request a contested hearing on the recommendation to order the children detained, but, rather, argued the credibility, relevance, and weight of the information in the detention report. Reviewing the evidence in the detention report in the light most favorable to the court's order, as we must (*In re Misako R., supra,* 2 Cal.App.4th at p. 545), we conclude numerous people and agencies provided mother with assistance and the services provided were reasonable under the circumstances.

The family had a history of numerous child neglect referrals going back to 2002, alleging, among other things, that mother left the children alone with no supervision or with inappropriate supervision and neglected the children's medical and dental health. While the referrals prior to the referral on June 17, 2010, were all found to be inconclusive or unfounded, the Department's investigations alerted mother that children must be appropriately supervised and their medical and dental health not neglected. Mother was offered services but she refused them and stated she did not want any sort of involvement by the Department.

Prior to the Department's detention of the children on June 30, the social worker interviewed mother, family members, medical and safety personnel, and others, who had knowledge of the events and circumstances leading up to the detention or had background information, and the social worker obtained medical records. While R. was in the hospital between June 17 and 20, 2010, doctors, social workers, and other hospital personnel, and the Department social worker, explained to mother that R.'s condition needed further evaluation and follow up, offered her accommodations and alternatives for accomplishing this, and urged her to promptly follow up on his fragile state and head fracture. A social worker was in communication with Dr. Wang and the hospital social worker, among others, while R.'s head injury was being worked up and after R. went home with mother June 20. On June 24 and 25, the social worker learned that it was imperative for mother to bring R. in for medical procedures and follow up for R.'s very low weight and skull fracture. The social worker went to the home on June 30 and communicated this information to mother. The social worker explained the urgency of bringing R. in for a work up, encouraged her to do so, urged her to cooperate in getting the medical services for the children that they needed, and found out from mother what, if anything, mother had done to follow up medically on the skull fracture and R.'s fragile condition. Mother was uncooperative. She refused to obtain, or consent to, medical treatment for R. When asked if she had taken R. to the doctor after June 20 for his head injury and fragile state, she refused to answer, stating she would only discuss the subject with a judge.

Counseling, case management, parent training, and transportation were among the services the Department believed could prevent the need for detention, but mother wanted no services from the Department. With all this information, the social worker concluded the children's safety required that they be detained from mother's custody.

The foregoing is substantial evidence that reasonable efforts were made to prevent the need for detention of the children.

6. *Mother's religious and medical concerns.*

Mother contends the Department failed to honor her religious and medical concerns. She requests we declare the Department violated her rights and direct the dependency court to issue orders to the Department, including an order to replace the social workers assigned to the case. Mother's challenge is to the conduct of the Department. She does not cite an order of the court that she contends violates her religious and medical rights. The court of appeal reviews judgments and orders. (See Code Civ. Proc., § 904.1.) As we are not asked to review an order, the contention is not cognizable in the appeal.

DISPOSITION

The dependency court's judgment and orders of December 23, 2011, are affirmed. The Department's petition for extraordinary writ is dismissed as moot. The matter is remanded for a new dispositional hearing concerning X. and R. based on current circumstances, to be conducted as expeditiously as possible. Our order of December 23, 2011, staying the dependency court's December 23, 2011 home-of-parent order will remain in effect until the dependency court has made a custody order at the conclusion of the disposition hearing and a file-stamped copy of the custody order is filed in this court.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.